

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

Anthony Galbraith,

Plaintiff,

v.

Dr. Michael Miney, et al.,

Defendants.

Case No. 2:21-cv-00932-RFB-DJA

**Order**

Before the Court is *pro se* Plaintiff Anthony Galbraith's motion for subpoenas (ECF No. 17) and motion for appointment of counsel (ECF No. 24). Because subpoenas are not the proper method for Plaintiff to serve remaining Defendants, the Court denies his motion for subpoenas without prejudice. (ECF No. 17). Because Plaintiff's case is still in the early stages, the Court denies his motion for appointment of counsel without prejudice. (ECF No. 24).

**I. Discussion.**

In his motion for subpoenas, Plaintiff requests seven subpoenas so that he can serve the remaining Defendants. (ECF No. 17). However, subpoenas are not the appropriate way to serve Defendants. There are only three remaining Defendants in this case who have not been served: Dawn Jones, Brittany Caldwell, and Gregory Bryan. The Attorney General's office filed these Defendants' last known addresses under seal because it could not accept service for them. (ECF Nos. 15, 16). Under the Court's screening order, if the Attorney General's office could not accept service for "any of the named defendant(s), Plaintiff shall file a motion identifying the unserved defendant(s), requesting issuance of a summons, and specifying a full name and address for the defendant(s)." (ECF No. 13 at 2). Accordingly, if Plaintiff wishes to serve these individuals, he must file a motion identifying which Defendants he wishes to serve, requesting the issuance of a summons, and specifying that the Defendants' addresses are under seal at ECF No. 15. The Court will thus deny Plaintiff's motion for subpoenas without prejudice.

1 In his motion for appointment of counsel, Plaintiff explains that he has been moved to  
2 Southern Desert Correctional Center, but that after a recent escape, he has been denied access to  
3 the law library. (ECF No. 24). He adds that his case will involve conflicting testimony and that  
4 counsel will help him present evidence and cross examine witnesses. (*Id.*). Courts have authority  
5 to request that an attorney represent any person unable to afford counsel. 28 U.S.C. § 1915(e)(1).  
6 Whether to appoint counsel is within the discretion of the district court and requires a showing of  
7 exceptional circumstances. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th  
8 Cir. 2004). To determine whether exceptional circumstances exist, courts consider the likelihood  
9 that the plaintiff will succeed on the merits as well as the plaintiff's ability to articulate his claims  
10 "in light of the complexity of the legal issues involved." *Id.* Neither factor is dispositive, and  
11 both must be viewed together. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

12 In *Kern v. Henry*, the Honorable District Judge Richard F. Boulware appointed counsel to  
13 an inmate who asserted that HDSP violated his Eighth Amendment rights by imposing  
14 unconstitutional conditions of confinement. *See Kern*, 2017 U.S. Dist. LEXIS 62435, at \*1-4.  
15 The court first found that the inmate's claim was likely to succeed because it had survived  
16 summary judgment and would proceed to trial. *Id.* It then found that the inmate would have  
17 difficulty articulating his claim considering its complexity. *Id.* The court explained:

18 Plaintiff's Eighth Amendment conditions of confinement claim will  
19 involve both nuances of the law as it relates to different aspects of  
20 confinement, e.g. exercise and hygiene, and trial preparation in  
21 relation to witnesses who are confined (or were confined) with  
22 Plaintiff. While Plaintiff has been able to sufficiently raise genuine  
23 issues of material fact for the one claim that is proceeding, this  
24 standard is different and less burdensome than what he will face at  
25 trial. The court finds that complexity of the relevant legal issues and  
26 requirements for trial preparation in this case warrant the  
27 appointment of counsel.

28 *Id.*

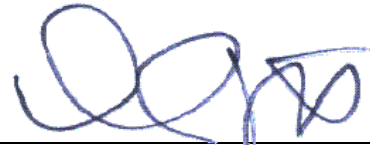
Here, the Court denies Plaintiff's motion for appointment of counsel as premature. (ECF  
Nos. 24). Plaintiff's case is not yet at the trial stage. Discovery has just closed, and dispositive  
motions have yet to be filed. Additionally, Plaintiff has demonstrated an ability to articulate his

1 claim sufficiently enough to pass screening. In the event Plaintiff's claims progress further and  
2 the process of litigating his claims may involve the conflicting testimony and cross examination  
3 about which Plaintiff is concerned, he may re-file his motion for counsel. The Court thus denies  
4 Plaintiff's motion without prejudice, giving him leave to re-file his motion later.

5  
6 **IT IS THEREFORE ORDERED** that Plaintiff's motion for subpoenas (ECF No. 17) is  
7 **denied without prejudice.**

8 **IT IS FURTHER ORDERED** that Plaintiff's motion for appointment of counsel (ECF  
9 No. 24) is **denied without prejudice.**

10  
11 DATED: February 27, 2023



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE